

**Listing**

Program Element		FY 2005 Actual	FY 2006 Enacted	FY 2007			Change From 2006 (+/-)
				Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	Budget Request	
Critical Habitat	\$(000)	11,067	12,499	+101	-20	12,581	+81
	FTE	63	63	-	0	63	0
Listing	\$(000)	4,643	5,131	+56	-9	5,178	+47
	FTE	31	31	-	0	31	0
<b>Listing, Total</b>	<b>\$(000)</b>	<b>15,710</b>	<b>17,630</b>	<b>+158</b>	<b>-29</b>	<b>17,759</b>	<b>+129</b>
	<b>FTE</b>	<b>94</b>	<b>94</b>	<b>-</b>	<b>0</b>	<b>94</b>	<b>0</b>

**Summary of FY 2007 Program Changes for Listing**

Request Component	Amount	FTE
Program Changes		
• Critical Habitat for Already Listed Species	0	0
• Other Listing Activities	0	0
• Program Management Savings	-29	0
<b>Total, Program Changes</b>	<b>-29</b>	<b>0</b>

**Justification of 2007 Program Changes**

The FY 2007 budget request for Listing is \$17,759,000 and 94 FTE, a net program decrease of \$29,000 and 0 FTE from the 2006 enacted level.

**Program Management Savings (-\$29,000)** - To enable the Service to address its highest priorities during constrained fiscal times, the Service proposes reducing program administrative funding by \$1,980,000. Using Activity Based Cost information and other budgetary analyses the Service anticipates achieving a savings of \$29,000 in Listing. These savings will be realized by streamlining program administrative support activities.

**Program Performance Change**

The requested budget change will not affect performance of the Listing Program. Funding provided in fiscal year 2007 will allow the Service to help meet performance targets and goals as they are developed. In FY 2007 the Service will be proposing and finalizing critical habitat for more species than in FY 2006 to meet court orders and settlement agreements. For further information on performance data, please refer to the Program Performance Change table at the beginning of the Endangered Species section.

**Program Overview**

The Listing program funds the process of adding species to the list of threatened and endangered species. It also funds the listing process and critical habitat petitions and designation of critical habitat. Listing activities contribute to the Department's strategic goal of Resource Protection by working to sustain biological communities on DOI managed and influenced lands and waters. Listing a species and designating critical habitat provide species with the protections of the *Endangered Species Act (ESA)*, and focus resources and the efforts of the Service and its partners on the recovery of the species.

Listing becomes necessary when a species declines to the point where it is at risk of extinction or may become so in the foreseeable future. The *ESA* provides that any interested person may petition to add a

species to, or to remove a species from, the list of endangered and threatened species. Through the candidate assessment process, funded by the candidate conservation subactivity, the Service identifies species for candidates to list. Both the petition management and candidate assessment processes may result in a species being proposed for federal listing under the *ESA*.

The listing of species as threatened or endangered provides the species with protections under *ESA*. These include restrictions on taking, transporting, or selling a species; a requirement that federal agencies not fund, permit or undertake activities that would jeopardize the continued existence of the species; authorization for the Service to develop and carry out recovery plans; authority to purchase important habitat; and provide federal aid to state wildlife agencies that have cooperative agreements with the Service. Habitat is also safeguarded through the *ESA*'s section 9 prohibition on take, and through the section 7 consultation process. In a section 7 consultation, the Service looks at effects of federally funded or approved activities on the species' ability to survive. If critical habitat has been designated for a species, the Service also considers, during consultation, whether the federal activity will destroy or adversely modify critical habitat.

#### ***ESA* DEFINITIONS**

***Endangered*** - a species is in danger of extinction throughout all or a significant portion of its range.

***Threatened*** - a species is likely to become endangered within the foreseeable future.

Critical habitat is required to be designated for a species, concurrent with its listing, "to the maximum extent prudent and determinable." If the Service finds that critical habitat is "not determinable" at the time of listing, it may extend the statutory deadline by one year. To the extent that the Service finds the designation is "not prudent," no designation is required. In the past, the Service had often found that designation of critical habitat was not prudent when listing new species. However, courts have held the prudency exception to be very narrow, which has led to a need to designate critical habitat for many already-listed species.

The petition management process addresses the *ESA*'s provisions that enable any interested person to petition the Secretary to either add or remove a species from the lists of threatened and endangered species. The Service also receives a number of petitions for amendments to critical habitat and other actions. These actions are not subject to the same strict deadline as listing petitions, but they must be acted on in a timely manner. Upon receipt of a petition, the Service must respond, within 90 days when practicable, with a finding as to whether the petition provided substantial scientific or commercial information indicating that the petitioned action may be warranted. If the Service determines the petition did not provide substantial information indicating that the action may be warranted, the 90-day finding completes the petition management process for that petition. However, if the Service determines the petition provided substantial information, the Service initiates a status review and issues a finding within 12 months of the receipt of the petition.

There are three possible outcomes of the "12-month finding": 1) listing is not warranted, and no further action is taken; 2) listing is warranted, and a listing proposal is promptly prepared; or 3) listing is warranted but precluded by higher priority actions (this determination is based on the species' listing priority number and the listing workload), and preparation of a listing proposal is therefore delayed until higher priority actions are completed. The Service ensures consistent and rigorous analysis of petitions by following the Petition Management Guidance issued in 1996.

Section 4 of the *ESA* has strict, non-discretionary deadlines for the processing of listing and critical habitat actions. For example, section 4(b)(6)(C) requires critical habitat to be designated at the time of listing, section 4(b)(6)(A) requires final listing rules to be promulgated no later than 12 months after the proposed rule, and section 4(b)(3)(B) requires final petition findings to be made within 12 months of a petition to list a species if a positive 90-day finding has been made.

When the Service cannot comply with a section 4 deadline, parties frequently file lawsuits under the citizen suit provision of the *ESA*. These missed deadline suits nearly always result in a court order or a settlement agreement requiring the Service to act, as courts have concluded that they have little or no discretion to give the Service relief from the mandatory deadlines of section 4 of the *ESA*. As a result, since FY 2000 the Service has spent essentially all of its listing appropriation on compliance with existing court orders, litigation support, and related program management and administrative functions.

The Service was able to meet listing and critical habitat deadlines in FY 2005 by spreading costs over 2005 and 2006 for workload that straddled fiscal years and finding efficiencies in economic analyses and printing. Starting in FY 2004, the Service has seen an increase in the petition litigation such that the Department approved a shift of critical habitat funds to listing funds in order to comply with our petition deadlines in 2005. The program expects continued litigation in FY 2006 and FY 2007.

### **2007 Program Performance Estimates - Listing**

In FY 2007, the Service will continue to address the listing backlog by completing court-ordered and settlement agreement actions, and, to the extent that discretionary funds are available, by focusing on listing actions that provide the greatest benefit for species at risk of extinction as funding allows. This work is expected to remain at high levels. However, through greater efficiencies, the Service expects improved performance in a number of areas, such as eight additional species for which critical habitat is proposed. The Program Performance Overview table at the beginning of the Endangered Species section contains additional examples.

### **Critical Habitat for Already Listed Species**

The Service anticipates that it will work on 15 final critical habitat rules, and 21 proposed critical habitat rules in FY 2007. Final critical habitat rules are likely for species such as the Canada lynx, Laguna Mountains skipper, Alabama beach mouse, and three Comal Springs invertebrates, among other species. Proposed critical habitat rules are likely for the Cape Sable seaside sparrow, the tidewater goby, the San Diego thornmint, and the Pecos sunflower, among other species.

### **Other Listing Activities**

This requested funding includes a total of \$5,178,000 for other listing activities. This amount of funding will provide for 9 proposed listings, 5 final listing determination (such as for the 12 Hawaiian picture-wings), 40 12-month and 90-day findings (including for 16 Algodones Dunes species and the Siskiyou Mountains and Scotts Bar salamanders). In addition, the Service is involved in litigation with respect to 26 other listing actions, and has received Notices of Intent to Sue (NOI) with respect to an additional 24 listing actions.

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**2006 Planned Program Performance - Listing**

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**Critical Habitat for Already Listed Species**

In FY 2006, the Service is under court order to complete the following critical habitat designations for already listed species:

- Final critical habitat designations for 13 species
- Proposed critical habitat designations for 13 species

**Other Listing Activities**

At the 2006 enacted level, the Service intends to address 90-day and 12-month findings on citizen petitions in FY 2006. Due to the increased number of court deadlines, the Service will continue to use most funds for other listing activities to meet those deadlines. During the 2006 Fiscal Year, we project completion of the following other listing actions (estimated numbers):

- Final listing determinations for five species
- Proposed listings for two species
- 90-day and 12-month petition findings for 39 species
- Emergency listings as necessary

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**2005 Program Performance Accomplishments - Listing**

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Through careful planning and management, the Service was able to complete this work within its available funding. Costs were spread over FY 2005/FY 2006 and the Listing/Critical Habitat program was able to identify enough efficiencies in economic analyses and printing costs to accomplish the workload. In FY 2005 the Listing Program met its goal to list 8 species, propose critical habitat for 11 species, and finalize critical habitat for 22 species; established baselines for petition findings; and provided litigation support:

- Listed 8 species
- Proposed the listing of one species
- Proposed critical habitat for 11 species
- Finalized critical habitat for 22 species
- Completed nine 12-month petition findings
- Completed eleven 90-day petition findings
- Provided litigation support on 32 active lawsuits, 55 actions under court compliance, and 27 Notices of Intent to Sue